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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,499	08/05/2003	Martin Grohman	33105	8662

7590 03/14/2007
HOVEY WILLIAMS LLP
Suite 400
2405 Grand Boulevard
Kansas City, MO 64108

EXAMINER

CANFIELD, ROBERT

ART UNIT	PAPER NUMBER
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3635

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/634,499	Applicant(s) GROHMAN, MARTIN	
	Examiner Robert J. Canfield	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-40, 42-52 and 55-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-40, 42-52 and 55-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/10/06, 10/31/06, 02/23/07</u> . | 6) <input type="checkbox"/> Other: _____ |

1. This Office action is in response to the amendment filed 12/21/06. Claims 28-40, 42-52 and 55-61 are pending. Claims 1-27, 41, 53 and 54 have been canceled.

2. The supplemental IDS's filed 10/10/06, 10/31/06 and 02/23/07 have been considered. Initialed copies of the 1449 forms are attached.

3. The declaration filed on 12/21/06 under 37 CFR 1.131 is sufficient to show conception and reduction to practice of the claimed subject matter at a date prior to January 03, 2002.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 28-40, 42-52 and 55-61 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,470,641 to Faure.

Faure provides first 12 and second 14 boards each having upper and lower lips separated by grooves 36/38 on opposite sides. The boards 12/14 are fastened to spaced joists 46 by generally T-shaped metal fasteners 16. The fasteners 16 have a base 22 and a pair of protrusions 24/26 above the base at a height. The thickness of the lower lips or vertical distance to the grooves from the bottom of the boards is greater than the distance between the base 22 and protrusions 24/26 of the fasteners 16 to provide pressure of the protrusions [bottom of column 2] to provide a holding force. The metal of the fasteners is inherently a resilient material.

7. Claims 28-30, 36 and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,314,699 to West.

West provides first and second boards 16 each having upper and lower lips separated by grooves 18 on opposite sides. The boards 16 are fastened to spaced joists 14 by fasteners 12. The fasteners 12 have a base and a pair of protrusions 28/48 above the base at a height. The thickness of the lower lips 22 or vertical distance to the grooves from the bottom of the boards is greater than

the distance between the base and tips 48 of protrusions 28 of the fasteners 16.

While the tips 48 are not disclosed as bearing on the lower lips to provide an interference type fit they are operable to rigidly couple to the joists and are capable of doing so in an interference type manner if the gap between the boards was slightly increased. As such they are "operable to" exert a downward holding force as recited in claim 37 but do not "exert" a downward holding force as required in claim 31. Figure 1A appears to show at least about a 5% difference.

8. Applicant's arguments filed 12/21/06 with respect to the West '699 patent have been fully considered but they are not persuasive.

Applicant argues that West fails to provide the protrusions extend "generally perpendicularly from a vertical axis of the fastener". If one considers elements of 30 and 48 as a whole as one protrusion and elements 28 and 48 as a whole as another protrusion as darkened below then West meets the claim.

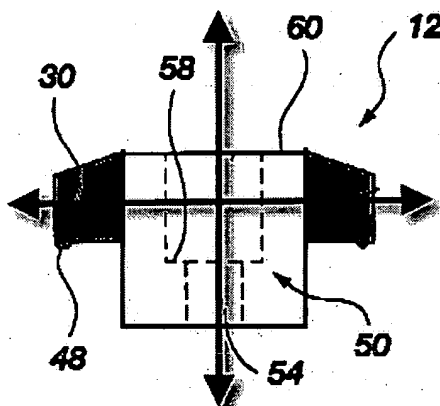


Fig. 4

Applicant further argues that West fails to provide the average vertical distance "F" from the base to the protrusions. Interpreting "F" as below, "E" is clearly greater than "F".

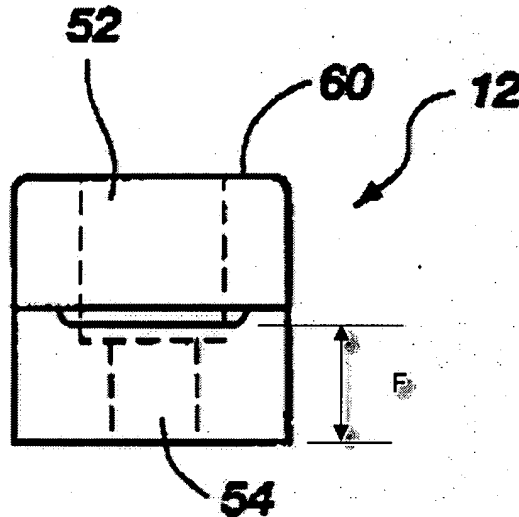


Fig. 5

Applicant argues that Faure fails to provide that the fasteners 16 are "generally T-shaped". This is not found persuasive. One ordinary skill in the art would consider the elevation of fastener 16 shown in Figure 3 as "generally T-shaped". Fasteners 16 are provided with an upstanding base 22 that has protrusions 24 and 26 extending perpendicularly and outwardly from the top thereof. One of ordinary skill in the art would consider this to meet the limitation of "generally T-shaped".

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

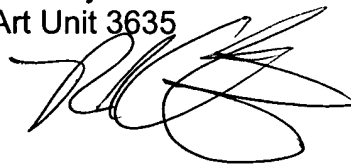
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Canfield whose telephone number is 571-272-6840. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert J Canfield
Primary Examiner
Art Unit 3635

A handwritten signature in black ink, appearing to be 'RJC', written over the printed name of the examiner.